

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 80—Solid Waste Management**  
**Chapter 8—[Waste] Scrap Tires**

**10 CSR 80-8.050 [Waste] Scrap Tire Processing Facility Permits** The department is amending the chapter title, the rule title, the purpose, sections (1) – (6), and adding section (7).

*PURPOSE: This rule contains the requirements for [waste] **scrap** tire processing facility permits. The department is amending portions of the rule to reflect revised statutory language in Senate Bill 225 to replace references to “waste tire” with the term “scrap tire”. This amendment will also correct typographical errors, grammatical errors, and update materials referenced in the rule.*

**(1) Definitions.**

(A) A [waste] **scrap** tire is a tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

1. A tire no longer suitable for its original intended purpose due to wear is a tire with exposed cord or tread depth less than two thirty-seconds inch (2/32") when measured in any major groove.

2. A tire still mounted on a rim is not a [waste] **scrap** tire, except as described in paragraph (1)(A)3.

3. Any tire that is discarded with the intent of final disposal is also a [waste] **scrap** tire.

(B) A cut tire is a [waste] **scrap** tire cut in half along the tire's circumference or cut into at least three (3) parts with no part being larger than approximately one-third (1/3) of the original tire's size.

(C) A shredded or chipped tire is a [waste] **scrap** tire that has been reduced to parts no larger than that defined in the definition of a cut tire.

**(D) For purposes of this rule, a scrap tire that has been reduced to parts no larger than one-half inch nominal is not a scrap tire.**

**(E) A passenger tire equivalent (PTE), for the purposes of calculating the amount of tire rubber, equals twenty (20) pounds.**

~~[(D)]~~ **(F)** A [waste] **scrap** tire processing facility is a site where [waste] tires are reduced in volume by shredding, cutting, **buffing**, chipping, baling or otherwise altered to facilitate recycling, resource recovery or disposal. A person who operates ~~[portable]~~ **mobile** or stationary [waste] **scrap** tire processing equipment ~~[for consideration]~~ is a [waste] **scrap** tire processing facility under this rule.

**(G) A scrap tire site is a site at which five hundred (500) or more scrap tires are accumulated. No new scrap tire sites shall be permitted by the department after August 28, 1997, unless they are located at permitted scrap tire processing facilities or registered scrap tire end-user facilities.**

**(H) A mobile scrap tire processor is a scrap tire processing operation that provides scrap tire removal services for the abatement of scrap tire sites, or for scrap tire collection centers by operating mobile scrap tire processing equipment at remote locations, and that does not store whole or processed scrap tires at any location at any time.**

**(2) General Requirements.**

(A) This rule is intended to provide minimum requirements for operation of a [waste] **scrap** tire processing facility **and a mobile scrap tire processor**. If techniques other than those listed in this rule are to be used, it is the obligation of the [waste tire processing facility] owner/operator to demonstrate to the department in advance that the techniques to be employed satisfy the requirements. Detailed processing facility and operational plans for the techniques shall be submitted to the department in writing and approved by the department in writing prior to being employed. The techniques utilized shall not result in pollution, a public nuisance or a health hazard.

(B) [Waste] **Scrap** tire processing facilities, **and mobile scrap tire processors** shall be in compliance with the requirements of the department's Clean Water Law, Chapter 644, RSMo and implementing regulations.

**(C) Permitted scrap tire processing facilities are to be used only for the proper and temporary storage of scrap tires.**

**(3) Applicability.**

(A) Permit Exemptions. The following persons are not required to obtain a [waste] **scrap** tire processing permit provided that pollution, a public nuisance or a health hazard is not created and provided the tires are stored according to the requirements of section (5) of this rule:

1. Processing facilities with less than twenty-five (25) tires at the facility at all times;
2. Any collection center which exclusively processes [waste] **scrap** tires generated solely at the collection center, provided that the processing is done using the collection center's employees and processing equipment and provided the processing takes place at the collection center where the [waste] **scrap** tires are generated; and
3. Any collection center that contracts with a permitted [waste] **scrap** tire processing facility for the processing and proper disposal of [waste] **scrap** tires generated solely at the collection center.

(B) Any [waste] **scrap** tire processing facility or mobile **scrap** tire processor not specifically exempted under subsection (3)(A) is required to be permitted under this rule.

(C) [Any] **All** [waste] **scrap** tire sites [permitted after August 28, 1997,] must [also] be permitted as a [waste] **scrap** tire processing [facility] **facilities** under 10 CSR 80-8.050. [Any waste tire site permitted on or before August 28, 1997, must also be permitted as a waste tire processing facility under 10 CSR 80-8.050 unless the person who maintains such site verifies that a quantity of waste tires at least equal to the number of additional waste tires received was shipped to a waste tire processing or end-user facility within thirty (30) days after receipt of such additional waste tires.]

**(4) [Waste] Scrap Tire Processing Facility Permit Application.**

(A) A person desiring to establish, maintain or operate a [waste] **scrap** tire processing facility shall make application to the department **in triplicate** on forms provided by the department. Processing facilities in existence on the effective date of this rule shall make application within thirty (30) days of the effective date of this rule and shall be allowed to continue to operate during the permit review process provided that the facility does not cause a public nuisance, a health hazard or pollution and provided that the application is submitted on time and complete.

(B) An application for a [waste] **scrap** tire processing facility permit shall be sent by certified mail to the Missouri Department of Natural Resources, Solid Waste Management Program, P.O. Box 176, Jefferson City, MO 65102-0176. The application shall consist of—

1. A completed [Waste] **Scrap** Tire Processing Facility Permit Application form which will be provided by the department;

2. Detailed site plans and operational plans containing the information necessary to comply with the storage and record keeping requirements of this rule. Plans shall include:

**A. An estimate of the inventory of scrap tires that can be processed or used in six (6) months of normal and continuous operation. This estimate shall be based on the volume of tires processed or used by the facility in the last year, or the manufacturer's estimated capacity of the processing equipment. This estimate may be increased when new equipment is obtained by the owner of the facility and may be reduced if equipment used previously is removed from active use. Active use will be determined on a case-by-case basis and will be based on the provisions of the permit;**

**B. Topographic and boundary surveys prepared by a registered land surveyor showing contour intervals of ten feet (10') or less. This survey shall have a scale of not less than one inch equals four hundred feet (1" = 400'). All existing and proposed storage areas and structures shall be shown on the survey;**

**C. A map showing the land use and zoning within five hundred feet (500') of the property boundaries, including the location of all residences, buildings, utilities and easements. This map shall have a scale of not less than one inch equals four hundred feet (1" = 400'); and**

**D. Detailed plans containing the information necessary to comply with the closure requirements and financial assurance instrument requirements of this rule.**

**3. A contingency plan designed to minimize the hazards to human health and the environment from fires, runoff of contaminants resulting from fires and from mosquitoes in case of failure of the primary method of vector control. The contingency plan shall include, but not be limited to, the following items, as applicable:**

**A. The actions site personnel must take in response to fires, runoff resulting from fires and mosquito breeding in scrap tires;**

**B. An evacuation plan for site personnel, in case of fire; and**

**C. Evidence that the fire contingency plan has been provided to the local fire and police departments;**

[3.] **4. Plans for final disposition of the [waste] scrap tires;**

[4.] **5. Evidence of compliance with department's Clean Water Law, Chapter 644, RSMo and implementing regulations;**

[5.] **6. Evidence of compliance with local zoning requirements;**

[6.] **7. Evidence of property ownership [and];**

[7.] **8. Explicit written authorization from the property owner, if different from the applicant, for land use for scrap tire storing and processing operations; and**

[8.] **9. Nonreturnable processing facility permit fee of two hundred dollars (\$200). The fee shall be paid by **certified** check or money order made payable to the Department of Natural Resources. [If the facility is required to apply for both a waste tire site permit, and a waste tire processing facility permit, and the permits are applied for at the same time, the department will only charge one (1) permit fee.]**

(C) The applicant shall reimburse the department for all permit review costs incurred by the department up to a maximum of two thousand dollars (\$2,000). The department will submit a bill to the applicant for review costs incurred after completion of the investigation of the original application and upon completion of the investigation of any subsequent submittals. Payment must be received before the permit will be issued. Permit review costs shall include: permit application review time and costs associated with site visits. *[If the facility is required to apply for both a waste tire site permit and a waste tire processing facility permit, and the permits are applied for at the same time, the department will only charge for one (1) permit review.]*

(D) Application Review, Approval and Denial. The department will complete an investigation of the application to determine compliance with the requirements of sections 260.200–260.345, RSMo, and corresponding rules, and render a decision to the applicant. When the investigation reveals that the [waste] **scrap** tire processing facility application—

1. Complies with the provisions of sections 260.200–260.345, RSMo, and corresponding rules, the department will approve the application and issue a permit; or

2. Does not comply with the provisions of sections 260.200–260.345, RSMo, and corresponding rules, the department will issue a written denial to the applicant, including the reasons for denial.

(E) Permit Issuance, **Suspension**, Revocation and Modification.

1. A permit for a [waste] **scrap** tire processing facility will be issued to the owner/operator for the life of the facility.

2. A [waste] **scrap** tire processing facility permit may be revoked or suspended for noncompliance with the provisions of sections 260.200–260.345, RSMo or corresponding rules.

3. The department may, at any time during the life of the permit, open and modify or alternately revoke the permit and require the permittee to comply with any currently applicable federal, state or local requirements.

(5) Storage Requirements.

(A) Fire Protection.

1. *[Indoor and outdoor whole waste tire storage shall meet the Standard for Storage of Rubber Tires, NFPA 231D, 1994 edition, adopted by the National Fire Protection Association (NFPA)]* **The owner or**

operator of a scrap tire processing facility shall provide written evidence from the local fire protection agency that indoor and outdoor storage of whole or processed scrap tires complies with the currently applicable local or state fire protection standards, or the scrap tire processing facility must comply with the currently applicable national fire protection standards pertaining to rubber tire storage as published by the National Fire Protection Association or the International Code Council which by this reference [is] are incorporated into this rule.

[2. Indoor and outdoor cut, chipped or shredded [waste] scrap tire storage shall meet the fire prevention, exposure protection and fire fighting access guidelines contained in the Standard for Storage of Rubber Tires, NFPA 231D, 1994 edition, adopted by the National Fire Protection Association.

3. Indoor storage requirements are contained in NFPA 231D, 1994 edition. Outdoor storage requirements are contained in NFPA 231D, Appendix C, 1994 edition. Copies of the NFPA standard may be obtained by contacting the NFPA, P.O. Box 9101, Quincy, MA 02269 (800-344-3555).]

(B) Runoff Protection. Surface water drainage shall be diverted around and away from [waste] scrap tires.

(C) Location. [Waste] Scrap tire processing facilities shall not be located in a wetland, sinkhole or floodplain (unless protected against at least the one hundred (100)-year design flood by impervious dikes or other appropriate means to prevent the flood waters from contacting the [waste] scrap tires).

(D) Site Control. [Waste] Scrap tire processing facilities shall be fenced or enclosed or otherwise made inaccessible. Signs shall be posted to prohibit unauthorized entry. (Wording such as "Access Restricted to Authorized Haulers Only" should be used.)

(E) Vector Control. Conditions shall be maintained that are unfavorable for the harboring, feeding and breeding of vectors. If the method being used to control vectors is not effective, the owner/operator of the [waste] scrap tire processing facility shall use an alternative method to correct the vector problem. The owner/operator of a [waste] scrap tire processing facility shall use one (1) or more of the following methods of vector control:

1. Drain tires of water and keep dry within a building, enclosed trailer or under a cover that is water impermeable. The cover shall be maintained to be water impermeable;
2. Alter tires so they do not retain water;
3. Treat the tires with a larvicide and/or adulticide appropriate to prevent the development of mosquito larvae and pupae and repeat treatment as often as necessary to prevent such development, taking into account the effectiveness and life of the larvicide and/or adulticide utilized.

A. Larvicides and/or adulticides shall be applied in accordance with their label, Chapter 281, RSMo and its implementing regulations.

B. The dimensions of the tire pile and the method of stacking the tires shall allow for application of the larvicide and/or adulticide to all tires; and

4. Alternate methods of vector control must be approved by the department if documented to control larvae, pupae and adult mosquitoes.

(F) Inventory. The inventory of unprocessed [waste] scrap tires on the premises of the facility shall not exceed the amount that can be used in six (6) months of normal and continuous operation. This amount shall be based on the volume of tires used by the facility in the last year or the manufacturer's estimated capacity of the equipment used by the facility. The inventory of processed [waste] scrap tires on the premises of the facility shall not be more than twice the amount of unprocessed tires allowed by this rule.

(6) Record Keeping Requirements. The owner/operator of a [waste] scrap tire processing facility shall maintain the records required by this rule. All records required by this rule shall be kept for at least three (3) years. The period of record retention extends upon the written request of the department or automatically during the course of any unresolved enforcement action regarding the regulated activity. The records shall be made available for inspection by the department or its designated representative upon request. The records shall include at least the following:

- (A) Major operational problems, complaints and difficulties;

(B) On forms provided by the department, the number of tires received each week, number of tires removed to final disposition each week, final disposition of removed tires and the name and permit number, if applicable, of each [waste] **scrap** tire hauler bringing tires to or removing tires from the facility. This information shall be summarized monthly; and

(C) Records of Vector Control Activities. For a [waste] **scrap** tire processing facility utilizing a larvicide and/or adulticide for vector control, the records shall include the following:

1. If the larvicide/adulticide is applied by a registered pest control company, the name of the company and the date of application; or
2. If the larvicide/adulticide is not applied by a registered pest control company, type(s) of larvicide/adulticide utilized, amount utilized and date applied.

**(7) Closure, Financial Assurance.**

(A) Exemptions. The following are not required to establish a closure plan and financial assurance instrument provided that pollution, a public nuisance or a health hazard is not created and provided the scrap tires are stored according to the requirements of section (5) of this rule:

1. Mobile scrap tire processors permitted by the department; and
2. Scrap tire processing facilities permitted by the department, at which less than five hundred (500) scrap PTE are stored at any time.

**(B) Closure Plan Requirements.**

1. Plans for closure of the scrap tire processing facility shall include methods, time schedules and cost estimates for removal of all scrap tires and site clean-up and restoration activities. The cost estimates for the amount of the financial assurance instrument shall be based upon the current costs of similar cleanups using data from actual scrap tire cleanup project bids received by the department to remediate scrap tire sites of similar size. The following shall be performed as a part of closure of a scrap tire processing facility and shall be included in the plans:

A. Removal and clean-up plans and cost estimates. Scrap tires shall be removed from the site and taken to a Missouri facility that has obtained applicable permits from the department or taken out-of-state (provided that transport and final destinations are in compliance with the requirements of that state). The site shall be cleaned up so as to remove all other solid waste to provide a pleasing appearance;

B. Site restoration plans and cost estimates. If necessary, removal of any contaminated soil, debris, residue, and/or placement of cover and establishment of vegetation in a manner as to minimize erosion, control drainage and provide a pleasing appearance. For the purposes of financial assurance instruments, the cost of removal of at least fifty-percent (50%) of processed scrap tire material that has been reduced to parts no larger than one-half inch nominal;

C. The owner/operator must demonstrate in the closure plan that the estimate represents the maximum closure costs at any time during the active operation of the scrap tire site;

D. The cost estimate(s) submitted with the closure plan shall contain an estimate in current dollars (based upon the current costs of similar cleanups using data from actual scrap tire clean-up project bids received by the department to remediate scrap tire sites of similar size) and an adjusted estimate for the succeeding five (5) years based on the projected rate of inflation. The rate of inflation used for this purpose shall be the latest percent change in the Implicit Price Deflator for the Gross Domestic Product for the latest completed year, as determined by the United States Department of Commerce, Bureau of Economic Analysis. The adjusted cost estimate shall be used to determine the amount of the financial assurance instrument; and

E. The closure cost estimates shall be adjusted every five (5) years by the owner/operator based upon the actual rate of inflation for the preceding five (5) years and the projected rate of inflation for the succeeding five (5) years. The adjusted cost estimates shall be submitted to the department for review every five (5) years after the date of permit issuance.

2. The owner/operator of a scrap tire processing facility shall notify the department in writing at least ninety (90) days prior to the date the owner/operator expects to begin closure. The

owner/operator shall begin implementation of the closure plan required in this rule within thirty (30) days after the closure date specified in the closure plan.

3. Owner/operators of a permitted scrap tire processing facility as a part of closure of the scrap tire site, shall execute an easement with the department, which allows the department, its agents or its contractors to enter the premises to complete work specified in the closure plan, to monitor or maintain the scrap tire site, or take remedial action. This easement will be terminated upon proper closure of the site.

4. If changes in the design and/or operation of a scrap tire processing facility make modifications in the closure plans or cost estimates necessary, modified closure plans and cost estimates shall be submitted to the department for approval prior to implementation of the changes.

**(C) Financial Assurance Requirements.**

1. A permit will not be issued until financial assurance instruments as required by subsection (7)(C) of this rule have been submitted and approved by the department.

A. Increasing and decreasing financial assurance instruments. The following shall apply to all financial assurance instruments as specified in paragraph (7)(C)2. of this rule except the financial test, corporate guarantee and insurance: When the estimated closure cost increases, the amount of the financial assurance instrument shall be adjusted to cover the increase in the cost estimate. The owner/operator shall increase the amount of the financial assurance instrument within one hundred eighty (180) days of the increase in the estimate and submit written evidence of the increase to the director or obtain other financial assurance as specified in paragraph (7)(C)2. of this rule to cover the increase. If the current closure cost decreases and the owner/operator has received written approval from the director of this decrease, the owner/operator may decrease the amount of the closure financial assurance instrument.

B. Release of closure financial assurance instruments. The department will inspect a permitted scrap tire processing facility when notified by the owner/operator that the closure plan has been implemented. If the inspection reveals that the approved closure plan has been properly effected, the director shall authorize the release or proportional release of the financial assurance instrument submitted for closure and interest, if any.

C. Forfeiture of financial assurance instruments. If the owner/operator fails to properly implement the closure plan, the director will give written notice of the violation and order the owner/operator to implement the closure plan. If corrective measures approved by the director are not commenced within a specified and reasonable time, the director will order forfeiture of all or that part of the owner/operator's financial assurance instrument necessary to implement the closure plans. Any owner/operator aggrieved by a forfeiture order may appeal as provided in section 536.150, RSMo.

2. Financial assurance instruments. The requirements of subsection (7)(C) of this rule for financial assurance instrument(s) for closure may be satisfied by establishing a trust fund or escrow account, securing a financial guarantee bond or a performance bond, obtaining an irrevocable letter of credit, insurance, or a combination of these as outlined in paragraph (7)(C)2. of this rule. This requirement may also be satisfied by meeting a financial test and by using a corporate guarantee. A municipality or county may satisfy the requirements by signing a contract of obligation.

A. Trust fund or escrow account. The establishment of a trust fund or escrow account may be used to satisfy the requirement for a financial assurance instrument to provide for closure.

(I) A bank or other financial institution which is authorized to administer trusts in Missouri and whose trust operations are regulated and examined by Missouri or a federal agency shall act as the trustee of the closure trust fund. An escrow account shall be established at a bank or financial institution which is located in Missouri and which is examined by Missouri or a federal agency.

(II) The trust fund or escrow account shall consist of cash, certificates of deposit or United States government securities. United States government securities include treasury bills, treasury bonds and treasury notes guaranteed by the federal government.

(III) Wording of trust fund or escrow account agreements.

(a) The wording of the trust fund agreement must be identical to the wording specified in form MO 780-1272 and the trust fund agreement must be accompanied by a formal certification of acknowledgment form MO 780-1271. An original or an originally signed duplicate of the trust fund agreement shall be submitted to the department.

(b) The wording of the escrow account agreement shall be identical to the wording in form MO 780-1264. An original or an originally signed duplicate of the escrow account agreement shall be submitted to the department.

(IV) If the owner/operator establishes a trust fund or escrow account after having used one (1) or more alternate mechanisms specified in paragraph (7)(C)2. of this rule, the first payment must be in at least the amount that the trust fund or escrow account would contain if the trust fund or escrow account were established initially and annual payments made based upon the current costs of similar cleanups using data from actual scrap tire clean-up project bids received by the department to remediate scrap tire sites of similar size.

(V) If an owner/operator substitutes other financial assurance as specified in subsection (7)(C) of this rule for all or part of the trust fund or escrow account, s/he may submit a written request to the department for release of all or a portion of the amount covered by the trust fund or escrow account.

(VI) Within sixty (60) days after receiving a request from the owner/operator for release of funds as specified in part (7)(C)2.A.(V) of this rule, the director will instruct the trustee or escrow agent to release to the owner/operator those funds as the director specifies in writing.

(VII) If the owner/operator does not properly implement the closure plan and does not comply with an order by the department to do so, the department will order the forfeiture of all or part of the trust fund or escrow account as specified in subparagraph (7)(C)1.C. of this rule.

(VIII) The director will agree to termination of the trust fund or escrow account when—

(a) An owner/operator substitutes alternate financial assurance as specified in subsection (7)(C) of this rule; or

(b) The director releases the owner/operator from the requirements of subsection (7)(C) of this rule.

**B. Financial guarantee bond.** The requirement for a financial assurance instrument may be satisfied by securing a financial guarantee bond.

(I) The bond shall be executed by the owner/operator and a corporate surety licensed to do business in Missouri. The surety company issuing the bond, at a minimum, must be among those listed as acceptable sureties on federal bonds in Circular 570 of the United States Department of the Treasury. Corporate surety companies that issue sureties in which the penal sums (face amounts) exceed the corporation's underwriting limitation must provide proof of coinsurance, reinsurance, or provide another method of assurance in accordance with Treasury Circular 297, Revised September 1, 1978, (31 CFR Sections 223.10-11).

(II) The wording of the surety bond must be identical to the wording specified in form MO 780-1265.

(III) The owner/operator who uses a surety bond to satisfy the requirements of subsection (7)(C) of this rule must also establish a standby trust fund or escrow account. Under the terms of the bond, all payments made will be deposited by the surety directly into the standby trust fund or escrow account in accordance with instructions from the director. This standby trust fund or escrow account must meet the requirements specified in subparagraph (7)(C)2.A. of this rule except that—

(a) An original or an originally signed duplicate of the standby trust fund or escrow account agreement must be submitted to the department with the surety bond; and

(b) Unless the standby trust fund or escrow account is funded pursuant to the requirements of subparagraph (7)(C)2.B. of this rule, the following are not required by these rules:

I. Payments into the trust fund or escrow account;

II. Annual valuations as required by the trust fund or escrow account agreement;

and

III. Notices of nonpayment as required by the trust fund or escrow account agreement.

(IV) The bond must guarantee that the owner/operator will—

(a) Fund the standby trust fund or escrow account in an amount equal to the penal sum of the bond before the beginning of final closure of the scrap tire site;

(b) Fund the standby trust fund or escrow account in an amount equal to the penal sum within thirty (30) days after an order to begin closure is issued by the department; or

(c) Provide alternate financial assurance as specified in subsection (7)(C) of this rule; and within ninety (90) days after receipt, by both the owner/operator and the department, of a cancellation notice of the bond from the surety, obtain the director's written approval of the provided assurance.

(V) Under the terms of the bond, the surety will become liable on the bond obligation when the owner/operator fails to perform as guaranteed by the bond.

(VI) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner/operator and to the department. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner/operator and the director, as evidenced by the return receipts.

(VII) The owner/operator may cancel the bond if the director has given prior written consent based on receipt of evidence of alternate financial assurance as specified in subsection (7)(C) of this rule.

C. Performance bond. The requirement for a financial assurance instrument may be satisfied by securing a performance bond guaranteeing performance of closure.

(I) The bond shall be executed by the owner/operator and a corporate surety licensed to do business in Missouri. The surety company issuing the bond, at a minimum, must be among those listed as acceptable sureties on federal bonds in Circular 570 of the United States Department of the Treasury. Corporate surety companies that issue sureties in which the penal sums (face amounts) exceed the corporation's underwriting limitation must provide proof of coinsurance, reinsurance, or provide another method of assurance in accordance with Treasury Circular 297, Revised September 1, 1978, (31 CFR Sections 223.10-11).

(II) The wording of the surety bond must be identical to the wording specified in form MO 780-1266.

(III) The owner/operator who uses a surety bond to satisfy the requirements of subsection (7)(C) of this rule must also establish a standby trust fund or escrow account. Under the terms of the bond, all payments made will be deposited by the surety directly into the standby trust fund or escrow account in accordance with instructions from the director. This standby trust fund or escrow account must meet the requirements specified in subparagraph (7)(C)2.A. of this rule, except that—

(a) An original or an originally signed duplicate of the standby trust fund or escrow account agreement must be submitted to the department with the surety bond; and

(b) Unless the standby trust fund or escrow account is funded pursuant to the requirements of subparagraph (7)(C)2.C. of this rule, the following are not required by these rules:

I. Payments into the trust fund or escrow account as specified;

II. Annual valuations as required by the trust fund or escrow account agreement;

and



**III. Notices of nonpayment as required by the trust fund or escrow account agreement.**

**(IV) The bond must guarantee that the owner/operator will—**

**(a) Perform final closure in accordance with the closure plan and other requirements of the scrap tire processing facility permit whenever required to do so; or**

**(b) Provide alternate financial assurance as specified in subsection (7)(C) of this rule and obtain the director's written approval of the provided assurance, within ninety (90) days after receipt by both the owner/operator and the department of a notice of cancellation of the bond from the surety.**

**(V) Under the terms of the bond, the surety will become liable on the bond obligation when the owner/operator fails to perform as guaranteed by the bond. Following a determination that the owner/operator has failed to perform final closure in accordance with the closure plan, under the terms of the bond the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund or escrow account.**

**(VI) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner/operator and to the department. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner/operator and the department, as evidenced by the return receipts.**

**(VII) The owner/operator may cancel the bond if the director has given prior written consent. The director will provide written consent when—**

**(a) An owner/operator substitutes alternate financial assurance as specified in subsection (7)(C) of this rule; or**

**(b) The director releases the owner/operator from the requirements of subsection (7)(C) of this rule.**

**(VIII) The surety will not be liable for deficiencies in the performance of closure by the owner/operator after the director releases the owner/operator from the requirements of subsection (7)(C) of this rule.**

**D. Letter of credit. The requirement for a financial assurance instrument may be satisfied by obtaining an irrevocable standby letter of credit.**

**(I) The letter of credit shall be issued by a state- or federally-chartered and regulated bank or trust association. If the issuing institution is not located in Missouri, a bank or trust association located in Missouri must confirm the letter of credit and the confirmation shall be filed with the department along with the letter of credit.**

**(II) The wording of the letter of credit must be identical to the wording specified in form MO 780-1267.**

**(III) An owner/operator who uses a letter of credit to satisfy the requirements of subsection (7)(C) of this rule must also establish a standby trust fund or escrow account. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund or escrow account in accordance with instructions from the director. This standby trust fund or escrow account must meet the requirements of the trust fund or escrow account specified in subparagraph (7)(C)2.A. of this rule, except that—**

**(a) An original or an originally signed duplicate of the standby trust fund or escrow account agreement must be submitted to the department with the letter of credit; and**

**(b) Unless the standby trust fund or escrow account is funded pursuant to the requirements of subparagraph (7)(C)2.D. of this rule, the following are not required by these rules:**

**I. Payments into the trust fund or escrow account as specified;**

**II. Annual valuations as required by the trust fund or escrow account agreement;**

**and**

**III. Notices of nonpayment as required by the trust fund or escrow account agreement.**

**(IV) The letter of credit must be accompanied by a letter from the owner/operator referring to the letter of credit by number, the issuing institution and date and providing the following information: the scrap tire processing facility permit number, name and address of the scrap tire processing facility and the amount of funds assured for closure of the scrap tire processing facility by the letter of credit.**

**(V) The letter of credit must be irrevocable and issued for a period of at least one (1) year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner/operator and the department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty (120) days will begin on the date when both the owner/operator and the department have received the notice, as evidenced by the return receipts.**

**(VI) If the owner/operator does not establish alternate financial assurance as specified in subsection (7)(C) of this rule and obtain written approval of this alternate assurance from the director within ninety (90) days after receipt by both the owner/operator and the department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the director will draw on the letter of credit. The director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of this extension, the director will draw on the letter of credit if the owner/operator has failed to provide alternate financial assurance as specified in subsection (7)(C) of this rule and obtain written approval of that assurance from the director.**

**(VII) Following a determination that the owner/operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the director may draw on the letter of credit.**

**(VIII) The director will return the letter of credit to the issuing institution for termination when—**

**(a) An owner/operator substitutes alternate financial assurance as specified in subsection (7)(C) of this rule; or**

**(b) The director releases the owner/operator from the requirements of subsection (7)(C) of this rule.**

**E. Insurance. The requirement for a financial assurance instrument may be satisfied by obtaining insurance. The insurance policy shall be irrevocable and without provisions to transfer, loan/borrow, withdraw, make premium payments from or otherwise extract or encumber funds from the face amount or cash surrender value of the policy, except upon written approval by the director or his/her designee.**

**(I) The insurer, at a minimum, shall be licensed to transact the business of insurance, or be eligible to provide insurance as an admitted or an excess or surplus lines insurer, in one (1) or more states, and authorized to transact business in Missouri by law and by the Missouri Department of Insurance.**

**(II) The wording of the certificate of insurance must be identical to the wording specified in form MO 780-1268.**

**(III) The insurance policy must be issued for a face amount at least equal to the amount specified in paragraph (7)(B)1. of this rule. The term face amount means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.**

**(IV) The insurance policy must guarantee that funds will be available to close the scrap tire processing facility whenever final closure occurs. The policy must also guarantee that once the final closure begins, the insurer, upon the direction of the director, will be responsible for paying out funds, up to an amount equal to the face amount of the policy, to that party(ies) as the director**

specifies. Release of the funds will be authorized by the director according to paragraph (7)(C)1. of this rule.

(V) The owner/operator must maintain the policy in full force and effect until the director consents to termination of the policy by the owner/operator as specified in part (7)(C)2.E.(VIII) of this rule. Failure to pay the premium, without substitution of alternate financial assurance as specified in subsection (7)(C) of this rule, will constitute a significant violation of these rules, warranting such remedy as the director deems necessary. The violation will be deemed to begin upon receipt by the department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(VI) Each policy shall contain provisions:

(a) Allowing assignment of the policy to a successor owner/operator. The assignment may be conditional upon consent of the insurer, provided the consent is not unreasonably refused.

(b) Providing that policy issued on a claims-made basis shall provide retroactive coverage from the date of issuance of said policy covering the facility and shall contain an extended claims reporting period of at least twelve (12) months.

(c) Designating the Director, Missouri Department of Natural Resources as the irrevocable primary beneficiary without collateral assignment(s).

(VII) The policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy, at a minimum, must provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the owner/operator and the department. Cancellation, termination or failure to renew may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by both the director and the owner/operator, as evidenced by the return receipts. Cancellation, termination or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration—

(a) The director deems the tire/site abandoned;

(b) The permit is terminated or revoked or a new permit is denied;

(c) Closure is ordered by the director or a United States district court or other court of competent jurisdiction;

(d) The owner/operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or

(e) The premium due is paid.

(VIII) The director will give written consent to the owner/operator that s/he may terminate the insurance policy when—

(a) An owner/operator substitutes alternate financial assurance as specified in subsection (7)(C) of this rule; or

(b) The director releases the owner/operator from the requirements of subsection (7)(C) of this rule.

F. Financial test and corporate guarantee. The requirements for a financial assurance instrument may be satisfied by passing a financial test. A corporate guarantee submitted by the parent corporation of the owner/operator as specified in part (7)(C)2.F.(X) of this rule may also be used to satisfy the requirements for a financial assurance instrument.

(I) To pass the financial test the owner/operator must meet the criteria of either subpart (7)(C)2.F.(I)(a) or (b) of this rule.

(a) The owner/operator must have—

I. Two (2) of the following three (3) ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

II. Tangible net worth at least 2.0 times the sum of the current closure cost estimates covered by the test; and

III. Assets in the United States amounting to at least ninety percent (90%) of his/her total assets or at least 2.0 times the sum of the current closure cost estimates covered by the test.

(b) The owner/operator must have—

I. A current rating for his/her most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

II. Tangible net worth at least 2.0 times the sum of the current closure cost estimates covered by the test; and

III. Assets located in the United States amounting to at least ninety percent (90%) of his/her total assets or at least 2.0 times the sum of the current closure cost estimates covered by the test.

(II) The phrase current closure cost estimates as used in part (7)(C)2.F.(I) of this rule refers to the cost estimates required to be shown in paragraphs 1.-4. of the letter from the owner/operator's chief financial officer form MO 780-1269.

(III) To demonstrate that s/he meets this test, the owner/operator must submit the following items to the department:

(a) A letter signed by the owner/operator's chief financial officer and worded as specified in form MO 780-1269;

(b) A copy of the independent certified public accountant's report on examination of the owner/operator's financial statements for the latest completed fiscal year based on generally accepted accounting principles; and

(c) A special report from the owner/operator's independent certified public accountant to the owner/operator stating that—

I. S/he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in those financial statements; and

II. The regulatory requirement that the certified public accountant provide assurance must be consistent with current professional auditing standards.

(IV) After the initial submission of items specified in part (7)(C)2.F.(III) of this rule, the owner/operator must send updated information to the department within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in part (7)(C)2.F.(III) of this rule.

(V) If the owner/operator no longer meets the requirements of part (7)(C)2.F.(I) of this rule, s/he must send notice to the department of intent to establish alternate financial assurance. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner/operator no longer meets the requirements. The owner/operator must provide the alternate financial assurance within one hundred twenty (120) days after the end of the fiscal year.

(VI) The director, based on a reasonable belief that the owner/operator may no longer meet the requirements of part (7)(C)2.F.(I) of this rule, may require reports of financial condition at any time from the owner/operator in addition to those specified in part (7)(C)2.F.(I) of this rule. If the director finds, on the basis of the reports or other information, that the owner/operator no longer meets the requirements of part (7)(C)2.F.(I) of this rule, the owner/operator must provide alternative financial assurance as specified in subsection (7)(C) of this rule within thirty (30) days after notification of such a finding.

(VII) The department may require and evaluate additional information which relates to financial status, including present or potential environmental liabilities and may deny the use of the financial test based upon the evaluation or the failure of an applicant to provide such additional information requested by the department within thirty (30) days from the date of that request.

Pending approval of the use of the test by the director or pending appeal before any court of competent jurisdiction of the department's denial of the use of the test, the owner/operator shall comply with the financial assurance requirements through the use of an alternate financial assurance mechanism as described in subsection (7)(C) of this rule. The burden of proof shall be on the applicant in the event of any appeal of a denial. If the department rules that the firm's financial test is unacceptable, the firm shall have thirty (30) days from the date of notification of such a decision to provide alternative financial assurances.

(VIII) The department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner/operator's financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The department will evaluate other qualifications on an individual basis. The owner/operator must provide alternate financial assurance as specified in subsection (7)(C) of this rule within thirty (30) days after notification of the disallowance.

(IX) The owner/operator is no longer required to submit the items specified in part (7)(C)2.F.(III) of this rule when—

(a) An owner/operator substitutes alternate financial assurance as specified in subsection (7)(C) of this rule; or

(b) The director releases the owner/operator from the requirements of subsection (7)(C) of this rule.

(X) An owner/operator may meet the requirements of subsection (7)(C) of this rule by obtaining a written guarantee, referred to in this rule as corporate guarantee. The guarantor must be the parent corporation of the owner/operator. The guarantor must meet the requirements for owner/operators in parts (7)(C)2.F.(I)–(VIII) of this rule and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in form MO 780-1270. The corporate guarantee must accompany the items sent to the department as specified in part (7)(C)2.F.(III) of this rule. The terms of the corporate guarantee must provide that—

(a) If the owner/operator fails to perform final closure of a scrap tire processing facility covered by the corporate guarantee in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in subparagraph (7)(C)2.A. of this rule in the name of the owner/operator;

(b) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner/operator and to the department. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner/operator and the department, as evidenced by the return receipts; and

(c) If the owner/operator fails to provide alternate financial assurance as specified in subsection (7)(C) of this rule and obtain the written approval of the alternate assurance from the director within ninety (90) days after receipt by both the owner/operator and the department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide the alternative financial assurance in the name of the owner/operator.

G. Contract of obligation. Municipalities or counties may satisfy the requirements for a financial assurance instrument by entering into a contract of obligation for the full amount of the approved closure cost estimates. The wording of the contract of obligation shall be identical to the wording specified in form MO 780-1263.

(I) The contract of obligation shall be a binding agreement on the municipality or county, allowing the department to collect the required amount from any funds being disbursed or to be disbursed by Missouri to the municipality or county. A municipality or county that uses the contract of obligation every five (5) years shall submit a letter to the department from the governing body reaffirming the amount of their financial obligation. The wording of the contract of obligation shall be identical to the wording specified in the Contract of Obligation form.

**(II). Resolution and /or Ordinance.** The Contract of Obligation shall be submitted to the department by the owner/operator with an attached Resolution or Ordinance specifying the name of the Signatory Agent having the designated authority to sign the Contract of Obligation. The Resolution or Ordinance shall contain wording similar to the wording specified in the Resolution / Ordinance form.

**(III). Local Government Financial Test.** The Contract of Obligation shall be submitted to the department every five (5) years by the owner/operator with an attached, accurate and complete Local Government Financial Test. The Local Government Financial Test shall contain:

(a) A letter signed by the owner/operator's Chief Financial Officer using wording identical to the wording specified in the Local Government Financial Test form;

(b) A copy of an independent certified public accountant's report on examination of the owner/operator's financial statements for the latest completed fiscal year; and

(c) A special report from an independent certified public accountant to the owner/operator stating that-

I. S/he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in the financial statements;

II. S/he should report an appropriate description of the findings using a summary of findings in accordance with the requirements of the American Institute of Certified Public Accountants Statement on Auditing Standards #75; and

III. The special report procedure was performed in accordance with Generally Accepted Accounting Principles (GAAP).

**(IV)** The owner/operator shall include a copy of the most recent comprehensive annual financial report (CAFR) disclosing, for public notice, all of the estimated Scrap Tire Processing Facility closure financial obligations. The report shall include:

(a) The nature and source of the closure requirements,

(b) The costs recognized to date,

(c) The costs remaining to be incurred,

**(V). Definitions.** The financial terms used in this rule shall be consistent with Generally Accepted Accounting Principles (GAAP).

**(VI). Qualifications.**

(a) Local governments will not be qualified to utilize Contracts of Obligation and Local Government Financial Tests if they have been determined to:

I. Be an enterprise fund, Solid Waste Management District or organization other than a county or incorporated city, town or village, as classified in Article VI, Section 15, of the Constitution of Missouri. Two or more qualified local governments may join in common to submit combined mechanisms,

II. Currently be in default on any outstanding general obligation bonds,

III. Have any outstanding general obligation bonds having a Standard and Poors rating less than BBB or a Moody's rating less than Baa,

IV. Have operated at a deficit exceeding five percent (5%) of the total annual revenues in each of the past two (2) years, except as allowed in Article VI, Sections 26(a) through 26(g), of the Constitution of Missouri,

V. Have a Relative Size Threshold in excess of forty-three percent (43%) of the local government's total annual revenues. This rule allows the annual guaranteed environmental financial assurances to sub-total up to forty-three percent (43%) of the total annual revenues with additional secured financial assurance mechanism(s) being demonstrated for the remaining balance.

VI. Have an adverse opinion or a disclaimer of opinion from an independent certified public accountant as reported under subparagraphs (7)(C)2.G.(III)(b) and (7)(C)2.G.(III)(c) of this rule, and

VII. Fail the ratio test criteria of subparagraph (7)(C)2.G.(VI)(b)I. of this rule.

(b) An owner/operator qualified under subparagraph (7)(C)2.G.(VI) of this rule shall pass the Local Government Financial Test by meeting the criteria of either parts (7)(C)2.G.(VI)(b)I., Alternative I, or (7)(C)2.G.(VI)(b)II., Alternative II, of this rule as follows:

I. Alternative I. The owner/operator shall have a Liquidity Ratio greater than or equal to 0.050 and a Debt Service Ratio less than or equal to 0.20, or

II. Alternative II. The owner/operator shall have a current rating for all outstanding general obligation bonds of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's. Ratings from agencies other than Standard and Poor's or Moody's and ratings on expired bonds, refunding bonds, revenue bonds, insured bonds or structured financing (guaranteed or collateralized) are not acceptable.

(VII). Effective Dates.

(a) All applicants and/or owners/operators of active *Scrap Tire Processing Facilities*, choosing to use a Contract of Obligation to guarantee Scrap Tire Processing Facility financial assurance, shall submit a Local Government Financial Test and a Comprehensive Annual Financial Report, using the most recent fiscal financial statements, with each Contract of Obligation and Resolution/Ordinance submitted on or after April 9, 1998. After initial approval, each owner/operator shall every five (5) years submit an updated Contract of Obligation and Resolution/Ordinance, Local Government Financial Test and Comprehensive Annual Financial Report within 180 days following the end of their fiscal year.

(b) All owners/operators of officially closed facilities, having properly executed Contracts of Obligation that were approved prior to April 9, 1998, are not required to submit a Local Government Financial Test nor a Comprehensive Annual Financial Report as long as they are in compliance with 10 CSR 80-2.030 at the time of closure. The cost estimates of the Contracts of Obligation for officially closed facilities may be every five (5) years adjusted for inflation, as specified in subsection (7)(C)1.A. of this rule, by using a cover letter amendment to the contract signed by the designated signatory agent.

H. Use of multiple financial assurance instruments. An owner/operator may satisfy the requirements of subsection (7)(C) of this rule for financial assurance instruments by establishing more than one (1) financial instrument per scrap tire processing facility for closure. These instruments are limited to trust funds, escrow accounts, financial guarantee bonds, and letters of credit. The instrument must be as specified in paragraph (7)(C)2. of this rule except that it is the combination of instruments, rather than the single instrument which must provide financial assurance for an amount at least equal to an amount based upon the current costs of similar cleanups using data from actual scrap tire clean-up project bids received by the department to remediate scrap tire sites of similar size. If an owner/operator uses a trust fund or escrow account in combination with a surety bond or a letter of credit, s/he may use the trust fund or escrow account as the standby trust fund or escrow account for the other instruments. A single standby trust fund or escrow account may be established for two (2) or more instruments. The director may use any or all of the instruments to provide for closure of the scrap tire site.

I. Filing, Increasing and Decreasing Financial Assurance Instruments. When increases in the financial assurance instrument are no longer being made and the estimated closure cost increases, the amount of the financial assurance instrument shall be adjusted to cover the increase in the cost estimate. The owner/operator shall increase the amount of the financial assurance instrument within sixty (60) days of the increase in the estimate and submit written evidence of the increase to the director or obtain other financial assurance as specified in subsection (7)(B) of this rule to cover the increase. If the current cost of closure decreases and the owner/operator has received written approval from the director of a decrease, the owner/operator may decrease the amount of the closure financial assurance instrument.

**J. Release of Financial Assurance Instruments.** The department will inspect a permitted Scrap Tire Processing Facility when notified by the owner/operator that the closure plan has been implemented. If the inspection reveals that the approved closure plan has been properly effected, the director shall authorize the release or proportional release of, the financial assurance instrument submitted for closure and interest, if any.

**K. Forfeiture of Financial Assurance Instruments.** If the owner/operator fails to properly implement the closure plan, the director will give written notice of the violation and order the owner/operator to implement the closure plan. If closure as approved by the director has not commenced within a specified and reasonable time, the director will order forfeiture of all or that part of the owner/operator's financial assurance instrument necessary to implement closure. Any owner/operator aggrieved by a forfeiture order may appeal as provided in section 260.235, RSMo.

***AUTHORITY:** sections 260.225 and 260.270, RSMo (Cum. Supp. 1996). \* Original rule filed April 16, 1997, effective Dec. 30, 1997.*

***\*Original authority:** 260.225, RSMo 1972, amended 1975, 1986, 1988, 1990, 1993, 1995 and 260.270, RSMo (1990), amended 1995.*

**PUBLIC COST:** This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

**PRIVATE COST:** This proposed amendment may cost private entities more than five hundred dollars (\$500) in the aggregate if a FAI is required.